

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAY - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
) OFFICE OF THE SECRETARY

In the Matter of

The ARRL's

"REQUEST FOR DECLARATORY RULING")
Titled "Compliance With Applicable Voluntary)
Band Plans in the Amateur Radio Service)

To: The Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

OBJECTION TO
REQUEST FOR DECLARATORY RULING

William Charles Houlne (WB6BNQ)
2732 Grove Street
National City, CA 91950-7605

April 13, 1998

No. of Copies rec'd
List ABCDE

1 I am writing this letter opposing the "Request for Declaratory Ruling" submitted by the
2 ARRL on April 3, 1998, titled "Compliance With Applicable Voluntary Band Plans in The
3 Amateur Radio Service." This request is dealing with frequency allocation matters in the
4 Amateur Radio Service. Specifically it entails a discussion of "Band Planning" and seeks the
5 Commissions acceptance and conformity.

6
7 The basis for the "REQUEST" is relying upon 47 C.F.R. §1.2 that addresses
8 "terminating a controversy or removing uncertainty," and 47 C.F.R. §1.41 specifying the
9 manner of style for an informal request. While the "REQUEST" seems to conform to the
10 information required of 47 C.F.R. §1.41, it does not conform to the requirements of 47
11 C.F.R. §1.2.

12
13 47 C.F.R. §1.2 requires a "controversy or uncertainty" and none such exists. While
14 one can generate uncertainties and controversy to serve such a purpose, they have substantiated
15 no "basis in fact" in the "REQUEST." Quite the contrary, the ARRL went to great lengths
16 showing that cooperation at local, regional, national, and international levels do in fact exist
17 and that such efforts are not only working, but, overall, are working quite well. *"That which*
18 *does not appear to exist is to be regarded as if it did not exist" [California Maxim of*
19 *Jurisprudence, Civil Code section 3530].*

20
21 47 C.F.R §1.2 is vague in that it does not spell out that a true controversy or
22 uncertainty needs to exist and therefore subjects the Commission to an undue burden of having
23 to deal with frivolous submissions. There needs to be a realistic distinction between the mere
24 concept of a perceived problem and an authenticated issue.

25
26 The "presumed" controversy or uncertainty raised in the "REQUEST" is lacking merit
27 in that 47 C.F.R. part 97.101, 97.205, and 97.303 addresses the issue. Especially part
28

1 97.101(b) which has been the one truly unique element that has set apart the Amateur Radio
2 Service from all other services. It specifically states:

3 *(b) Each station licensee and each control operator must*
4 *cooperate in selecting transmitting channels and in making the*
5 *most effective use of the amateur service frequencies. No*
6 *frequency will be assigned for the exclusive use of any station.*

7
8 On glancing over the "REQUEST" one would not find a fault with the basic concept
9 presented. However, on closer inspection, several serious flaws come to the surface. First is
10 the contrary nature of the "REQUEST" with regard to 47 C.F.R. part 97.101(b), among
11 others.

12
13 Second, while seemingly general in nature, what is really being requested is that the
14 ARRL's version of "a" national band plan be accepted by the FCC in a semi-formal method
15 without benefit of "community" inspection, input, or comment. This is offered up in their
16 background and argument for their "REQUEST" by trying to intimate that their "NATIONAL
17 BAND PLAN" is what is generally accepted.

18
19 Their "plan" is really a compilation of local and regional activity, especially regarding
20 VHF/UHF repeater stations. It is a complete disservice to the amateur community to
21 reference a letter, written in the past (1983) by a former FCC Official who evidently did not
22 have all the facts. This letter, apparently, draws the conclusion that the ARRL created the
23 band plan for repeaters by erroneously referring to the ARRL Repeater Directory as a national
24 band plan. Nothing could be further from the truth !!

25
26 The ARRL Repeater Directory was generated from local and regional repeater listings
27 for the purpose of making money. The ARRL's financial ability to produce and promote
28

1 nationwide, ensures that they will prevent competition from others seeking to do the same
2 thing and guarantee their market success. Those in the repeater community, to make certain
3 that their repeater was listed, would send in the information to the ARRL. After all, the input
4 of information for the listing was free and this would make sure that your repeater was
5 properly represented. This does not constitute the premise that the ARRL made or had a
6 national band plan regarding repeaters. Nor does it validate that the ARRL "plan" is
7 universally accepted.

8
9 The HF bands have been operating in a particular fashion for decades and have evolved
10 to a particular state of being that was not of the ARRL's making. Most notably, was the total
11 disregard for the ARRL "band plans" when the Commission instituted the "Incentive
12 Licensing"(1968/69). Another example was the generally accepted use of "Lower Sideband"
13 on 160/80/40 meters and "Upper Sideband" on 20/15/10 meters that was actually caused by
14 the equipment manufacturers (1960's). Makers like Swan, Drake and others produced
15 equipment that, for cost reasons, used an internal scheme where the radio only allowed
16 "Lower Sideband on 160/80/40 meters and "Upper Sideband" on 20/15/10 meters. Other
17 aspects of the FCC rules and international factors also set the general operating practices used
18 on the HF bands.

19
20 The VHF and above bands is where the ARRL has truly tried to control the operation.
21 Their "plan" seemed to coincide mostly with the East Coast area, while the Mid-states and the
22 West Coast have universally had different operating practices overall, and particularly
23 regarding repeater operations.

24
25 The supposition, here, is that everyone has "ACCEPTED" their plan. The only claim
26 that the ARRL can make is that their membership has accepted the plan and even that is
27 questionable. Their membership is about [1/4] of the total Amateur population. They do
28

1 not represent the entire Amateur population. In the "REPEATER" environment, the ARRL is
2 not the ruling party, nor do they exhibit a majority influence.

3
4 Third, if read closely, the first paragraph on page one of the "REQUEST" is almost a
5 complete "RE-WRITE" of 47 C.F.R. part 97.101(a). The general intent and meaning of
6 97.101(a) would be changed and it would, in effect, nullify 97.101(b). While the ARRL
7 talked about regional and local "plans" in their support pages, they specifically excluded that
8 language in the actual "declaratory request" which is the first paragraph on page one. The
9 actual language refers only to "widespread" accepted plans !!

10
11 Even if the language included local and regional plans, except for specific instances of
12 protection to other services, it would imply that where you may be "legal" in one local, you
13 could/would be "illegal" in a different local. This ambiguous implication would certainly
14 invite many legal arguments and seems totally contrary to the many court cases dealing with
15 such irregularities.

16
17 The wording of the first paragraph is philosophically and legally flawed in the fact that
18 it requires one to follow a "VOLUNTARY" plan. If it is voluntary, then, by any definition,
19 there can be no requirement to follow it, except, perhaps in the Army. This would negate the
20 intent of the "REQUEST" in first place. If it is "VOLUNTARY" how do you penalize
21 someone for not following it ?? The current language of 47 C.F.R. part 97 already clearly
22 addresses the intent of the ARRL "REQUEST" in a manner that is legally sound and equally
23 applicable to all Amateur Radio Operators alike.

24
25 Finally, one has to ask "What is the reason for such a fatuous submission ?" Is it for
26 purely humanitarian reasons ? Or is there another purpose ? In studying the "REQUEST"
27 various conclusions can be drawn. The one that first comes to mind and seems to be the
28

1 general intent of the submission is that it presupposes that the Amateur Community is too
2 illiterate to understand and follow the rules and regulations as set forth in 47 C.F.R. part 97.
3 While this may be the case for some individuals, it certainly does not fit the entire Amateur
4 Community.

5
6 However, upon closer inspection one finds a more "self-serving" purpose. In the
7 "Background" section of the "REQUEST," paragraph 14, the last sentence, which reads:

8 "Citation of amateur band plans as constituting good operating practice and
9 urging compliance therewith would assist in determining standards for the
10 malice component in a malicious interference case."

11 Here the ARRL lays open the real reason for this request, and as such it is faulty in its
12 assumption that band planning is the key to solving interference problems. This is tantamount
13 to treating the "symptom" rather than the "cause." While some repeater issues were
14 referenced in another part of the same paragraph, what is not written is far more interesting.

15
16 Consider the following example. Does a band plan include and cover a "NET"
17 operation ? It could be construed that a "NET" comes under the same "presumed protection"
18 as is afforded repeaters [in direct contravention to 97.101(b)]. Should this be the case, then
19 someone operating on a frequency that a net uses would become embroiled in a legal battle
20 over the sufficiency of a "particular" band plan. This situation could occur on the HF bands
21 where the accepted practices do not have the same requisites as the operations in the
22 VHF/UHF spectrum.

23
24 The primary "Bread-n-Butter" functionality of the ARRL, aside from making money, is
25 its "NETS" and "CONTESTS" (see my opposition to RM-9150 - currently in your division).
26 The ARRL has sought, for years, the FCC's involvement in protecting their operations. I see
27 this "REQUEST" as another guile attempt to accomplish the same thing. The ARRL had, in
28

1 the past, made this same request and received an answer (not to their liking), rendering this
2 submission moot.

3
4 In writing this letter I am stating my belief that the ARRL, in filing this and recent past
5 requests (RM-9150, RM-9196), is not seeking to represent the "whole" Amateur Community,
6 nor are their interests even slanted toward the "whole" Amateur Community, and as such, is
7 jeopardizing the "well being" of this community by entertaining the Commission's valuable
8 time with frivolous, ill-conceived submissions [see my opposition to RM-9196 - currently in
9 your division]. Here in California we have a series of "MAXIMS OF JURISPRUDENCE" in
10 our State laws. One of which states: *"The law neither does nor requires idle acts."* [California
11 *Maxim of Jurisprudence, Civil Code section 3532*].

12
13 In closing, I wish to point out that more worthwhile efforts are needing attention, both
14 within the realm of rule changes, as well as, improving areas of true leadership. To this end I
15 submit that the Commission should admonish the ARRL for their inappropriate use of scarce
16 Commission resources.

17
18 Respectfully,

19 

20 William Charles Houlne
21 WB6BNQ
22 2732 Grove Street
National City, CA 91950-7605

23 cc: John Borkowski, Chief Policy and Rules Branch, Public Safety and Private Wireless
24 Division.